

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2724 of 1996

AND

SPECIAL CIVIL APPLICATION NO 2878 of 1996.

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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DHULABHAI KHODARBHAI PATEL

Versus

GK FAKIR

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Appearance:

MR GR UDHWANI for Petitioner

SERVED for Respondent No. 1, 4

MR SK PATEL for Respondent No. 3

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CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 28/01/97

COMMON ORAL JUDGEMENT

Rule.

In both the petitions the pleadings are complete.

I have given opportunity to Advocates for the parties in both the petitions to argue the matter on merits. I have heard them fully on merits. I, therefore, proceed to decide these petitions finally.

2. Dhulabhai Kodarbhui Patel and Gangarambhai K.Patel have preferred these two Writ Petitions against the order passed by the Director of Agricultural Markets & Rural Finance, Gujarat State on 4th April, 1996, in Election Appeal No.13 of 1996.

3. These two petitioners had contested the election of Agricultural Produce Market Committee, Modasa, held on 12th March, 1996. In the said election voters had turn at the place of voting-polling station. But it seems that at the end of the time of voting 4 voters came before the Polling Officer in order to tender their votes. But on verification of record, it was found that the votes in the names of those 4 persons had already taken place earlier. It was the claim of those 4 voters that they had not tender the earlier votes which as per the record of Polling Officer were already tendered and, therefore, they be permitted to caste the votes. The Polling Officer allowed those 4 persons to cast their votes and votes of those 4 persons were kept in separate sealed envelope as tendered vote. After the voting was over, the counting had taken place and it was found that the petitioner in Petition No.2724/96 Dhulabhai Patel had secured 240 votes whereas petitioner in Petition No.2878/96 had secured 241 votes. Thereafter, 4 votes which were kept in sealed envelope by Director as tendered vote were taken into consideration by opening the sealed envelope and it was found that those 4 votes were in favour of Dhulabhai Patel. Then the Election Officer after verifying the record found that the earlier 4 votes were tendered in favour of Gangarambhai Patel petitioner in Petition No.2878/96. He then recorded his finding that the subsequent votes which were tendered as tendered vote were tendered by the genuine persons. He therefore, counted those 4 votes in favour of the petitioner Dhulabhai Patel petitioner of Petition No.2724/96 and he deducted 4 votes in favour of Gangarambhai Patel petitioner of Petition No.2878/96 and thus he declared the result that Dhulabhai Patel had secured 244 votes whereas Gangarambhai Patel had secured 237 votes. He thus declared Dhulabhai Patel as the successful candidate in the said election.

4. Being felt aggrieved by the decision of the said Election Officer, the petitioner in Petition No.2878/96 namely Gangarambhai Patel preferred Election Appeal No.13 of 1996 before the Director of Agricultural Marketing & Rural Finance. The said respondent No.1 heard the said appeal and he partly allowed the said appeal by declaring the election in favour of Dhulabhai Patel declared him as

a successful candidate was not correct. He, therefore, set aside his election. He further turned down the prayer of Gangarambhai Patel to declare him as a successful candidate and directed to hold a fresh election. Being aggrieved by the said decision given by respondent No.1 Director of Agricultural Marketing & Rural Finance, Gujarat State, these two petitions are filed. They are heard together and they are being disposed of by this common judgment.

5. At the time of hearing it was asked to the advocate for both the sides as well as advocate appearing on behalf of the government to verify as to whether there is a system of putting the indelible ink mark on the fingers of the voters when the voters come for the purpose of tendering their vote, it has been made quite clear before me by all the advocates except Advocate for petitioner in Petition No.2724/96 that there is no such system of putting the indelible ink mark on the finger of voters in order to identify of he having tendered his vote in the said election. Accordingly Advocate for Petition No.2724/96 is not in a position to make any statement in that respect as he has not been instructed on that point. Admittedly there is no system of giving identity card to the voters. Therefore, in the background of this admitted facts, the controversy between the parties would have to be taken into consideration and decided.

6. It is an admitted fact that when the voting is taking place, the candidates contesting the election are permitted to remain present at the place of voting and they are also authorized to have their Polling Officer present at the place of voting. When a voter comes to tender his vote, the voter is to declare his name, then it is the duty of the Polling Officer as well as the Polling Agent of both the candidates to verify as to whether the said person is one of the voter in the voters list prepared for the said election. After finding his name in the said voting list and on finding that neither the candidate for the election nor their Polling Agent disputing the identity of the voter, voter is permitted to tender vote. Now admittedly when 4 those votes were earlier tendered, it will have to presume that such a procedure had taken place. So it would be obvious that when earlier 4 those votes were tendered, neither the candidate nor their Polling Agent had doubted the identity of those 4 voters who had come to tender their voting. No doubt it is an admitted fact that 4 voters came subsequently and made a claim before the Polling Officer that they had not tendered votes, and, therefore,

their 4 votes were kept in a separate sealed envelope as tendered votes. Now when those 4 persons had come subsequently claiming that they had not tender earlier votes, it was incumbent to find out as to whether their claim was correct and genuine one. Because the possibility of those voters tendering their votes twice could not be ruled out. It is not possible hold from the material on record that any attempt was made to find out the said claim to be genuine or to be correct. What the Election Officer has done as could be seen from the order passed by the Appellate Authority is that when those 4 persons had come subsequently he has only tried to find out as to whether they were really those 4 persons who were named in the voters list but there is nothing on record to show that he has satisfied himself that earlier votes tendered were not in fact tendered by those 4 persons. Unless there is such a finding that the earlier votes were not tendered by those 4 persons, it would not be appropriate to hold that those 4 votes were invalid votes. It is no doubt the Election Officer had satisfied himself about the identity of those 4 votes when they came subsequently to tender their votes that they were voters. But merely he had satisfy himself when they came subsequently and made claim to give votes would not amount to the Election Officer coming to the conclusion that the earlier votes were not tendered by the same persons. As stated earlier as there is no system of putting an indelible ink mark on the fingers of the voter or putting any mark so as to note that the person had already tendered his vote or not. It is very difficult to hold that the persons who had tender the earlier votes particularly when their identity was not disputed by any of the Polling Officer that the votes tendered by them were not genuine and correct one. Therefore, in the circumstances, the decision, recorded by the respondent No.1 that the Election Officer was not justified in taking the said 4 votes in favour of the petitioner and adding 4 those votes in favour of the petitioner in Petition No.2724 of 1996 could not be said to be incorrect, illegal or contrary to the provisions of law.

7. What the learned Director of Agricultural Marketing Committee & Rural Finance has come to the conclusion that in view of the dispute between the parties, it is not possible to hold that there was a fair and proper tendering of voting in the election in question. Therefore, in the circumstances, he instead of declaring the petition in Petition No.2878/96 as elected directed that the election be held afresh. The said decision of the respondent No.1 could not be said to be improper or illegal in view of the controversy in

question. Therefore, in the circumstances, I hold that the order passed by the respondent No.1 could not be said to be either illegal or improper. It could not be either erroneous or unjust so as to exercise powers under Article 226 or 227 of the Constitution of India to set aside the order of respondent No.1. I, therefore, hold that both these petitions will have to be dismissed. I accordingly dismiss the same, but in the circumstances I direct both the parties to bear their respective costs.

Rule is discharged in both the petitions.

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